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IN THE
COURT OF APPEALS OF INDIANA

DION LANE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 71A04-0705-CR-278
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable Jerome Frese, Judge
Cause No.71D03-0511-FB-154

December 19, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

Dion Lane entered a plea of guilty to burglary, a Class B felony, and was sentenced to sixteen years in the Indiana Department of Correction, to be served consecutively to his sentence in another cause. Lane appeals, contending that the trial court erred in sentencing him and that his sentence is inappropriate. Concluding that the trial court properly sentenced Lane and that his sixteen-year sentence is not inappropriate, we affirm.

Facts and Procedural History

On November 5, 2005, Lane and another person broke into and entered the residence of a seventy-seven-year-old woman because they believed money Lane had stolen during a bank robbery (and that was subsequently stolen from him) was in the house. When Lane was confronted by the homeowner, he pushed her down, causing her to fall and sustain an injury. Lane and his companion took the homeowner's car keys and stole her car.

On November 22, 2005, Lane was charged with burglary and robbery, both Class B felonies. On March 21, 2007, five days before his trial was scheduled to begin, Lane appeared in court and stated his intention to plead guilty without a written plea agreement.[1] The trial court took a factual basis that supported both charges. At the conclusion of the hearing, the State dismissed the robbery charge and the trial court entered judgment of conviction against Lane for burglary, a Class B felony.

At the sentencing hearing on April 19, 2007, the trial court ordered Lane to serve

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[1] Lane stated that he was "confessing to this case." Transcript of Guilty Plea Hearing at 4. According to Lane's counsel, the State had indicated it would dismiss the robbery charge if Lane admitted the burglary. See id. at 7.

sixteen years at the Indiana Department of Correction for the burglary conviction. In addition, the trial court ordered the sentence to be served consecutively to the twenty-year sentence previously imposed in a separate proceeding in which Lane had been found guilty by a jury of robbery for the bank robbery that precipitated this offense. Lane now appeals his sentence.

Discussion and Decision

I. Propriety of Lane's Sentence

A trial court may impose any sentence authorized by statute and permissible under the Indiana Constitution "regardless of the presence or absence of aggravating circumstances or mitigating circumstances." Ind. Code § 35-38-1-7.1(d). However, trial courts are still required to issue a sentencing statement whenever sentencing a defendant for a felony. Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified on reh'g, 875 N.E.2d 218 (Ind. 2007). We will review a trial court's sentencing decision for an abuse of discretion, which occurs when the trial court's decision is "clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom." Id. (quoting K.S. v. State, 849 N.E.2d 538, 544 (Ind. 2006)). A trial court may abuse its discretion by finding aggravating circumstances unsupported by the record, omitting reasons "that are clearly supported by the record and advanced for consideration," or by noting reasons that are improper considerations as a matter of law. Id. at 490-91. However, the trial court no longer can be said to have abused its discretion by

improperly weighing the aggravating and mitigating circumstances. Id. at 491.

If we find an error related to the trial court's sentencing statement, "we have the option to remand to the trial court for a clarification or new sentencing determination, to affirm the sentence if the error is harmless, or to reweigh the proper aggravating and mitigating circumstances independently at the appellate level." Cotto v. State, 829 N.E.2d 520, 525 (Ind. 2005). Additionally, we may exercise our authority under Indiana Appellate Rule 7(B) to review the sentence to determine if it is inappropriate given the nature of the offense and the character of the offender. See Windhorst v. State, 868 N.E.2d 504, 507 (Ind. 2007); Ruiz v. State, 818 N.E.2d 927, 929 (Ind. 2004).

The trial court's sentencing order does not specifically state the aggravating and mitigating circumstances, referring only to "reasons stated" at the sentencing hearing. Appendix of Appellant at 11. At the sentencing hearing, the trial court found as aggravating factors the age of the victim, the circumstances of the crime, and Lane's criminal history. Specifically, it was noted that Lane was out on bond for felony charges of residential entry and domestic battery when he committed the bank robbery and this crime and that he had three prior felony convictions for dealing in cocaine.[2] As for mitigating factors, the trial court found as follows: "He did have a work history. I think he was trying to deal with cocaine apparently, at least he had jobs. And he did admit his culpability here." Transcript of Sentencing Hearing at 18. The trial court found that the aggravating factors outweighed

[2] The Pre-Sentence Investigation report is not part of the record on appeal. We have before us only the statements made by the parties and the trial court at the sentencing hearing as to the extent and nature of Lane's criminal history.

the mitigating factors and imposed a sixteen-year sentence, consecutive to Lane's sentence for bank robbery. A person who commits a Class B felony "shall be imprisoned for a fixed term between six (6) and twenty (20) years, with the advisory sentence being ten (10) years." Ind. Code § 35-50-2-5.

Lane first contends that the trial court should have given more weight to his guilty plea.[3] As noted above, there can be no abuse of discretion in the trial court's weighing of aggravating and mitigating circumstances. Anglemyer, 868 N.E.2d at 490. Lane also notes that his sentence was not required by statute to be served consecutively to his sentence for bank robbery, and contends that the "totality of the mitigating factors should have made Lane's sentence concurrent to the sentence [for bank robbery]." Brief of the Appellant at 8. Again, this seems to be a challenge to the trial court's weighing of the aggravating and mitigating circumstances, and we do not review the weight that a trial court assigns to aggravating and mitigating circumstances. Anglemyer, 868 N.E.2d at 490.

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[3] The heading to this section of Lane's brief states:

> The trial court failed to consider certain mitigating circumstances and in considering improper aggravating circumstances when it imposed a sentence consecutive to the sentence in [his bank robbery case].

Brief of Appellant at 7. Lane does not state which aggravating circumstances were allegedly improper. In this section of his brief, he does not advance any mitigators that were overlooked. However, in the section of his brief headed, "[t]he trial court erred . . . because the sentence was inappropriate in light of the facts and circumstances surrounding this case," id. at 8, Lane contends that the trial court "failed to adequately take into account Lane's prior attempt to plea, his mental condition, and his plea to both counts of the charging information," id. at 8-9. The trial court was inherently aware of the circumstances of Lane's plea, see Francis v. State, 817 N.E.2d 235, 237 n.2 (Ind. 2004), and we will not review the weight the trial court assigned to the plea. As for Lane's prior attempt to enter a plea and his mental condition, Lane did not offer either of these alleged mitigating circumstances at the sentencing hearing and they are not clearly supported by the record. See Anglemyer, 868 N.E.2d at 491 (stating that a trial court may abuse its sentencing discretion if its sentencing statement "omits reasons that are clearly supported by the record and advanced for consideration").

To the extent Lane is arguing that the trial court abused its discretion in ordering consecutive sentences, we note that Indiana Code section 35-50-1-2(c) provides: "the court shall determine whether terms of imprisonment shall be served concurrently or consectively. . . . The court may order terms of imprisonment to be served consecutively even if the sentences are not imposed at the same time." Where, as in this case, consecutive sentences are not mandated by statute, a trial court must find at least one aggravating circumstance to support the imposition of consecutive sentences. Ortiz v. State, 766 N.E.2d 370, 377 (Ind. 2002). If there are no aggravating circumstances, or if the aggravating and mitigating circumstances are in balance, concurrent sentences are required. Marcum v. State, 725 N.E.2d 852, 864 (Ind. 2000). "The same aggravating circumstance may be used to both enhance a sentence and justify consecutive terms." Id. The trial court here found several aggravating and mitigating circumstances, concluded the aggravating circumstances outweighed the mitigating circumstances, and imposed an enhanced sentence to be served consecutively to a previously-imposed sentence. Based on the trial court's findings, we conclude the trial court acted within its discretion in ordering consecutive sentences.

II. Appropriateness of Lane's Sentence[4]

[4] Although Lane invokes the phrase "inappropriate sentence" in his brief, he does not actually advance any argument premised on the nature of his offense or of his character. Nonetheless, as he has challenged his sentence, we will conduct an independent review of his sentence. See Anglemyer, 868 N.E.2d

When reviewing a sentence imposed by the trial court, we "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Ind. Appellate Rule 7(B). We have authority to "revise sentences when certain broad conditions are satisfied." Neale v. State, 826 N.E.2d 635, 639 (Ind. 2005). When determining whether a sentence is inappropriate, we must examine both the nature of the offense and the defendant's character. See Payton v. State, 818 N.E.2d 493, 498 (Ind. Ct. App. 2004), trans. denied. When conducting this inquiry, we may look to any factors appearing in the record. Roney v. State, 872 N.E.2d 192, 206 (Ind. Ct. App. 2007), trans. denied.

In regard to the nature of the offense, Lane broke into an elderly woman's home looking to steal money that had allegedly been stolen from him after he robbed a bank. When the woman confronted him, he pushed her down and caused her injury. He then took her car keys and stole her car. Lane was convicted of burglary, which is defined as breaking and entering another's building or structure with intent to commit a felony therein. Ind. Code § 35-43-2-1. It was charged as a Class B felony because the building or structure in question was a dwelling. Ind. Code § 35-43-2-1(1)(B)(i). The crime was completed upon entering the home; Lane then caused injury to the homeowner and stole her car. The crime was not a "garden-variety" burglary because of Lane's additional actions. In regard to Lane's

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at 491 ("where the trial court has entered a sentencing statement that includes a reasonably detailed recitation of its reasons for imposing a particular sentence that is supported by the record, and the reasons are not

character, he has three prior felony convictions for dealing cocaine, apparently uses cocaine, and committed this offense as well as an armed robbery while on bond for felony charges of residential entry and domestic battery. Lane's criminal history evidences a lack of respect for other people and their property. He did plead guilty, relieving an elderly woman of the rigors of a trial. Nonetheless, nothing in the nature of the offense or of Lane's character leads us to the conclusion that a sixteen-year sentence is inappropriate.

Conclusion

We conclude that the trial court did not err in sentencing Lane, and that a sixteen-year sentence for Class B felony burglary is not inappropriate. We therefore affirm the judgment of the trial court.

Affirmed.

KIRSCH, J., and BARNES, J., concur.

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improper as a matter of law," an Appellate Rule 7(B) analysis is the sole basis for challenging a sentence with which the defendant takes issue).